STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**)**	
On its Own Motion	**)**	
	)	
Investigation concerning Illinois Bell	**)**	**Docket No. 01-0662**
Telephone Company's compliance	**)**	
with Section 271 of the Telecommunications	**)**	
Act of 1996	**)**	

PHASE IA INITIAL BRIEF OF

McLEODUSA TELECOMMUNICATIONS SERVICES, INC.

AND

TDS METROCOM, INC.

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I. INTRODUCTION

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") and TDS Metrocom, Inc. (hereinafter collectively referred to as "MTSI-TDS") hereby submit their Initial Brief for Phase IA in this docket. In this initial brief, MTSI-TDS are addressing the Phase I issues identified by the Commission, namely, whether or not Ameritech Illinois ("Ameritech") has satisfied all non-OSS related checklist items and the public interest criteria for obtaining authority under Section 271 of the Telecommunications Act of 1996 to offer in-region long distance service.

Understandably, this proceeding has generated a great deal of interest because of the impact it will have on competition in Illinois. Therefore, it is critically important for this Commission to scrutinize Ameritech's 271 checklist compliance and the public interest criteria. Granting Ameritech authority to offer in-region long distance service should not be done lightly, or based on Ameritech's promises to do better. Ameritech has had over six years to open its markets to competitors. If Ameritech has not done something by now, it simply makes no sense to permit Ameritech to get by on a promise to change its ways -- the time for excusing non-compliance with regulatory requirements has long since expired. The basic criterion that the Commission must apply is whether or not Ameritech's local exchange markets are truly and irreversibly open to competitors, and therefore, competition. It has been the long-standing position of both McLeodUSA and TDS Metrocom that a Regional Bell Operating Company ("RBOC") should be granted Section 271 authority only if the RBOC truly meets the competitive checklist and public interest criteria. Competing head to head with RBOCs is exactly what McLeodUSA and TDS Metrocom have been built to do. However, effective head-to-head competition cannot truly begin until the RBOC has completely satisfied the competitive

checklist. Otherwise, it will not be effective head-to-head competition because an RBOC can unfairly take advantage of its status as the bottleneck incumbent local exchange carrier.

The record in Phase IA of this docket demonstrates that Ameritech has not complied with all the requirements contained in the competitive checklist under Section 271. The Staff of the Commission ("Staff") and the competitive local exchange carrier ("CLEC") parties have detailed a litany of ongoing failures of Ameritech with regard to the competitive checklist and the public interest criteria, not the least of which is Ameritech's outright rejection of the proposition that it must be in compliance with the pro-competitive requirements of Illinois law. MTSI-TDS fully support Staff's detailed analysis, which is the product of a tremendous amount of time and effort that Staff has dedicated to this docket. Staff has provided an accurate and thorough road map for Ameritech's Section 271 compliance, and it would well serve the consumers of Illinois for the Commission to adhere to that roadmap.

As discussed in more detail below, MTSI-TDS have identified their own particular subset of checklist- and public interest-related items, based on their experience, which demonstrate that Ameritech is not meeting its obligation to open its markets to competition. MTSI-TDS recognize that Staff and other CLECs have raised compliance issues regarding checklist items that MTSI-TDS have not specifically addressed in their testimony or in this brief. The failure of MTSI-TDS to discuss any other checklist items in general, or the particular checklist item or public interest issues raised by Staff and other CLECs, should not be construed as a concession that Ameritech has demonstrated compliance with these checklist items

II. ARGUMENT

A. Public Interest (Performance Measures) -- Ameritech is Assessing CLECS Excessive Trouble Identification Charges

MTSI-TDS witness Rod Cox testified that Ameritech is assessing CLECs an excessive

amount of Trouble Identification Charges ("TICs"). Ameritech assesses a TIC when its field technician codes a trouble ticket to report that service trouble could not be found or that customer premise equipment was the cause of the service problem. For 2001, Ameritech assessed McLeodUSA a substantial amount of TICs at about $71 per TIC. One of the causes of this problem is that Ameritech has not yet installed Network Interface Devices ("NIDs") to many of the premises serving end users in Illinois. When a NID is installed, Ameritech or a CLEC is able to do remote testing to determine whether or not the service problem is an Ameritech network problem. The results of remote testing can be audited and verified. However, if Ameritech has not installed a NID at the customer premise, MTSI-TDS cannot trouble-shoot with the customer. This forces MTSI-TDS to ask Ameritech to dispatch a field technician to isolate the trouble. Once at the premise, it is up to the field technician to properly code the service problem. There is no way to independently verify whether a field technician has properly coded the problem. (MTSI-TDS Joint Ex. 1.0, pp. 6-8)

Ameritech witness Muhs testified that Ameritech instituted a new policy that accounts for the escalation in TICs assessed to CLECs. (Ameritech Illinois ("AI") Ex. 16.0, lines 83-91) However, the problem identified by Mr. Cox is that the assessment of TICs is entirely dependent on the trouble resolution coding by Ameritech technicians, which is not auditable in any meaningful manner. It is also troubling that when Ameritech witness Mr. Brown was asked about being sent, by McLeodUSA, examples of alleged instances of miscoding of trouble tickets by Ameritech technicians, he was unable to recall any such correspondence. (Tr. 575-76).[1] The ultimate impact of this problem is not just that CLECs may be billed incorrectly for TICs by

[1]The ALJ asked Mr. Brown to provide an answer to whether or not he received this information from Mr. McNally at McLeodUSA. (Tr. 596). It does not appear that such information, to date, has been provided for the record.

Ameritech, but also that it results in inaccuracies in the data on which Ameritech's performance measures and remedy payments are based. (MTSI-TDS Joint Ex. 1.0, p. 6)

B. Checklist Item 1 (Collocation) -- Ameritech is Not Permitting CLECs Reasonable Access to Collocation on Rates, Terms and Conditions That Are Just and Reasonable

Competitive checklist Item 1 in Section 271(c)(2)(B)(i) of the Telecommunications Act of 1996 requires Ameritech to provide interconnection arrangements that meet the requirements of the 1996 Act, including Section 251(c)(2). MTSI-TDS witness Cox testified that Ameritech's current policies do not permit CLECs reasonable access to perform necessary maintenance related to the CLEC's collocation. Mr. Cox explained that Ameritech is not permitting MTSI-TDS to access to the back of the DMARC, which has been identified as the Connecting Facility Assignment ("CFA") for purposes of performing maintenance or troubleshooting on its collocation space. Previously, it was the practice between MTSI-TDS and Ameritech that the point of demarcation was a common point accessible by both parties to test and isolate in each direction to determine a course of action for the necessary repair. (MTSI-TDS Joint Ex. 1.0, pp. 16-17) Ameritech witness Anderson could not dispute that CLECs had previously been permitted access to perform such maintenance. Ameritech's new policy changes this basic principle that has long governed access to the CFA for CLECs.

MTSI-TDS and other parties provided evidence about the importance of having access to the CFA. Mr. Cox explained that a CLEC must be able to reasonably access the area on the exterior of its collocation space to perform tests, isolation and repairs. Ameritech apparently has imposed the new policy in order to increase security subsequent to September 11, and is requiring CLECs to use third-party vendors to perform such work. However, since CLECs have in the past been allowed escorted access into this area, it is hard to see how introducing another

party, a third-party vendor, will actually increase security. (MTSI-TDS Joint Ex. 1.0, pp. 17-18) Mr. Cox also explained the unreasonableness of Ameritech's requirement that effectively prevents CLECs from becoming certified third party vendors that would qualify to access the CFA. A CLEC's technicians would be able to meet whatever pre-screening and clearance requirements Ameritech can reasonably impose, but Ameritech's additional requirement that the third party vendor also be willing to perform work for Ameritech has no reasonable justification. Thus, the option for a CLEC to become an approved vendor is not a viable option for most CLECs. (MTSI-TDS Joint Ex. 1.0, pp. 18-19)

Ameritech witness Anderson agreed that it is currently Ameritech's policy not to permit CLECs access to the CFA. (AI Ex. 1.1, lines 343-75) Mr. Anderson's reliance on alleged security concerns simply does not support Ameritech's policy. Ameritech acknowledges that it will permit a third party vendor access to the CFA *without* an escort. (Tr. 1418-19) Yet, Ameritech is unwilling to permit a CLEC the same access to the CFA *with* an Ameritech escort. It simply makes no sense to conclude that there is a greater security risk when a CLEC accesses the CFA escorted by Ameritech personnel than when a third party vendor accesses the CFA without an escort. (MTSI-TDS Joint Ex. 1.0, p. 8; MTSI-TDS Joint Ex. 1.2, pp. 11, 12) The end result of Ameritech's policy is to make it much more onerous and expensive for CLECs to trouble-shoot customer-affecting problems. (MTSI-TDS Joint Ex. 1.0, p. 18; MTSI-TDS Joint Ex. 1.2, p. 10-11)

CLECs have demonstrated that access to the CFA is an essential aspect of nondiscriminatory access to collocation. Ameritech has completely failed to show that it provides CLECs reasonable access to the CFA – access which it previously granted. Ameritech's failure to provide CLECs reasonable access to the CFA is a failure to meet its

obligations under Checklist Item 1.

C. Checklist Item 1 (Interconnection) -- Ameritech Does Not Engage in Good Faith Negotiation of Interconnection Agreements

Ameritech has an obligation under Section 251 of the Telecommunications Act of 1996 to negotiate interconnection agreements ("ICA") in good faith. McLeodUSA witness Joy Heitland, who is Manager, Interconnection Negotiations, explained that Ameritech's interconnection process is designed to delay those negotiations. Ms. Heitland explained that McLeodUSA had conducted extensive interconnection negotiations with SBC-Ameritech starting in August 2000 and that the negotiation process was rife with examples of how SBC-Ameritech delays the negotiation process. For example, Ms. Heitland testified that the individual assigned to be the lead negotiator for SBC did not appear to be familiar with the existing Resale Agreements that McLeodUSA had in place for Illinois, which caused delays in resolving an issue during the negotiation. Though McLeodUSA raised the issue at an initial face-to-face meeting, Ameritech was unable to resolve this issue throughout the nine months of negotiations. Ameritech effectively never proposed a resolution of this issue throughout negotiations. The resolution of this issue was critical for McLeodUSA. (MTSI Ex. 2.0, pp. 2-3)

McLeodUSA experienced a similar disconnection with regard to its Hosting Agreement. McLeodUSA had entered into a Hosting Agreement with Ameritech as of 1999. Because of the existence of this agreement, McLeodUSA believed it was unnecessary to negotiate a new Hosting Appendix, Clearinghouse Appendix and Billing Collecting and Remittance (BCR) Appendix for the new ICA. Even though the Hosting Agreement was in effect, McLeodUSA and Ameritech negotiated these appendices for seven months. Ameritech informed McLeodUSA very late in the negotiation process that since the parties had an existing Hosting Agreement, there was not a need to include the BCR Appendix, Clearinghouse Appendix and

Recording Appendix in the ICA. As a result, the time spent negotiating these documents was unnecessary. If SBC Ameritech were familiar with existing agreements, this would not have happened. (MTSI Ex. 2.0, pp. 3-4)

Ameritech witness Thompson disputed McLeodUSA's claims that Ameritech did not negotiate in good faith. However, his testimony is baseless since he admitted that he was not familiar with the specific issues raised by Ms. Heitland's testimony, nor had he investigated them personally. Indeed, Mr. Thompson admitted that he was not aware of the particular issue on which Ms. Heitland had testified that Ameritech had changed its position. (Tr. 659-662) Ms. Heitland, who was directly involved in the negotiation process, presented much more credible evidence that SBC Ameritech changed positions on issues for many reasons that were beyond change in law concerns. Based on her experience, Ms. Heitland testified that SBC Ameritech changed positions during negotiations due to a change in the lead negotiator, a change in subject matter expert ("SME"), and a change in internal SBC processing procedures. (MTSI Ex. 2.0, p. 4)

Another example of Ameritech's failure to negotiate ICAs in good faith is Ameritech witness Mr. Thompson's acknowledgment that an SBC negotiator effectively has little, if any, discretion to deviate from the SBC-13STATE template agreement. Mr. Thompson's prepared testimony stated that a negotiator has no authority to make final decisions on questions of law, policy or operations. (AI Ex. 12.1, lines 90-93) That pretty much means that the person CLECs are required to negotiate with has no authority to truly negotiate any substantive provision of an ICA. If Ameritech requires its SMEs to make the final decisions on the key issues, than those are the individuals that must be present during the negotiations. Otherwise, the SBC "negotiator" is in reality merely a note-taker and messenger.

Finally, it cannot be ignored that during the contract preparation phase, McLeodUSA uncovered that, to put this occurrence in the kindest light to Ameritech, Ameritech made a gross document management error. It is undisputed that McLeodUSA discovered that the version of the ICA that Ameritech filed with the Commission in the parties' arbitration case (Docket 01-0623) contained *over 100 language changes that had never been presented to McLeodUSA during the negotiation process*. McLeodUSA witness Julia Redman-Carter summarized these as follows:

> The following is a list of changes made to the "negotiated document" in SBC's response filing in the arbitration. There are several categories that the changes fall into:
>
> a) McLeodUSA found 32 changes where SBC had struck-through language that was previously agreed-to;
>
> b) McLeodUSA found 71 changes where SBC had deleted language, but did not indicate that the language was deleted; 34 of these discrepancies were found in the Rights of Way Appendix.
>
> c) McLeodUSA found 42 examples where SBC had replaced language (some previously negotiated) and made no indication to MTSI that this is replaced language;
>
> d) McLeodUSA found 10 examples of changes where SBC had replacement language that had not been offered or discussed prior to the indicated changes in the filing at arbitration; and
>
> e) McLeodUSA found 13 examples where SBC had inserted new language that had never been provided to McLeodUSA before, and the text was inserted without any indication that it was new text. (MTSI-TDS Ex. 3.0, pp. 5-6)

While Ameritech may claim that on this one occasion it made a mistake with regard to the McLeodUSA document, it is clear that processes were not in place to prevent this type of document management problem. And while McLeodUSA found these errors in the document, it has no assurance that there were other such errors that were never found.

McLeodUSA's experience in its ICA negotiations with Ameritech manifests that Ameritech does not have in place processes and procedures that enable it to negotiate ICAs with CLECs in good faith. Thus, Ameritech fails this component of checklist item 1.

D. Checklist Item 2 -- Ameritech is Not Providing Non-Discriminatory Access To Unbundled Network Elements

Checklist item 2 (Section 271(c)(2)(B)(ii)) requires that Ameritech be providing nondiscriminatory access to unbundled network elements ("UNE") in accordance with the requirements of Sections 251(c)(3) and (d)(1) of the Telecommunications Act of 1996. McLeodUSA's evidence detailed several examples, based on McLeodUSA's experience, of Ameritech's failure to meet this requirement.

1. Tagging Lines and Circuits

MTSI-TDS witness Cox testified that Ameritech technicians have not been properly tagging the DMARC and NIDs with the necessary circuit number(s). Mr. Cox explained that installation of xDSL service by McLeodUSA was delayed approximately 30% of the time, with a frequent cause of the delay being the lack of labeling by technicians. Mr. Cox noted similar problems with voice service installation due to the same issue. (MTSI-TDS Joint Ex. 1.0, pp. 19-20) On rebuttal, Ameritech witness Deere maintained that Ameritech had instituted new measures to address the concerns of CLECs. (AI Ex. 5.1, lines 343-47)

2. Lack of Process Enabling a CLEC to Consolidate Carrier Codes

If a large retail customer of Ameritech merges with another large retail customer, Ameritech has processes in place that permit the surviving corporate customer to consolidate its retail services with Ameritech into one account. (Tr. 558-59). That permits the surviving entity, if it so chooses, to operate as one legal entity when it orders telecommunications services from Ameritech. MTSI-TDS witness Cox explained that Ameritech does not have such a process in

place for CLECs. Mr. Cox explained that the lack of such a process causes significant operational inefficiencies for a CLEC such as McLeodUSA that has acquired several CLECs over time. Due to the lack of such a process, McLeodUSA must continue to operate in several respects (such as submitting orders and trouble tickets) as if operating entities that have merged into McLeodUSA still existed as separate CLEC entities. That makes McLeodUSA's operations less efficient because a McLeodUSA order writer must know which former CLEC Access Customer Name Abbreviation and Service Provider IDs to use to submit an order for a particular exchange. MTSI-TDS witness Cox explained that McLeodUSA requested as early as 1998 that Ameritech develop a process that would permit McLeodUSA to consolidate other merged CLECs under the McLeodUSA carrier codes. (MTSI-TDS Joint Ex. 1.0, pp. 20-21)

Ameritech witness Brown admitted that to date Ameritech has not developed such a process, more than four years since McLeodUSA first requested that Ameritech devise such a process. Instead, Mr. Brown merely promised that Ameritech is continuing to work on developing such a process, but noted that such a process must be prioritized. Mr. Brown also noted that the FCC has never rejected a 271 application due to this issue. (AI Ex. 2.1, lines 268-282)

While this particular problem may be a novel issue in a Section 271 proceeding, the facts nonetheless confirm that this is an area in which Ameritech treats retail customers differently than it treats CLEC customers. Retail customers are not required to continue operating inefficiently as distinct operating entities because Ameritech has addressed this issue for that customer class. Moreover, Ameritech does not dispute that this issue has been on the table since at least 1998. In four years, Ameritech has done virtually nothing to address the discriminatory treatment of a CLEC that wants to consolidate its acquired CLEC operations into one operating

entity. (MTSI-TDS Ex. 1.2, pp. 13-14)

3. OSS -- SBC Ameritech's Joint Test Environment for LSOG 5 EDI Has Been Filled with Defects

As defined by the FCC, Ameritech's OSS is a separate UNE, which means that Ameritech must prove that it provides CLECs non-discriminatory access to its OSS. Section 271(c)(2)(B)(ii) (Checklist item 2). Though Ameritech's OSS performance is to be the subject of Phase II of this proceeding, Ameritech witness Cottrell made certain claims regarding Ameritech's OSS capabilities in his Phase IA testimony. Several parties, including Staff, McLeodUSA, AT&T and WorldCom, took issue with Mr. Cottrell's claims and presented substantial evidence that SBC Ameritech's OSS does not meet the obligation to provide non-discriminatory access to this UNE.

McLeodUSA witness Michelle Sprague, McLeodUSA's OSS Manager, echoing the testimony of AT&T witness Willard, presented detailed evidence showing that Ameritech's Change Management Processes ("CMP") regarding OSS releases are fatally flawed. While Mr. Willard detailed the problems with the LSOG 4 EDI release, Ms. Sprague's testimony confirms that the LSOG 5 EDI Joint Test Environment has been equally problematic. (McLeodUSA Ex. 4.1, lines 23-46). Indeed, the LSOG 5 EDI Joint Test environment has had so many defects that only one conclusion can be reached – SBC Ameritech had not adequately developed the Joint Test Environment before declaring the Test Environment was "open" so that it could meet its change management obligation to have the Test Environment open for 67 days before the scheduled release date.

The end result of the numerous defects with the LSOG 5 EDI documentation and in the Joint Test Environment is that *not one CLEC* is using LSOG 5 EDI to process commercial orders. (McLeodUSA Ex. 5.0, pp. 71-72, 74-75 (Ameritech Responses to McLeodUSA On-the-

Record Data Request Nos. 10 and 12)). Despite these facts, Mr. Cottrell would have the Commission give Ameritech a passing grade on its OSS.

Ms. Sprague's testimony provided detailed examples of problems encountered in the LSOG 5 EDI Joint Test Environment. (MTSI Exhibit 4.1, lines 32-46). Mr. Cottrell's response was simply to point the finger back at McLeodUSA. (AI Ex. 4.2, lines 259-267)[2] Yet, when Ameritech was asked to document Mr. Cottrell's "investigation" into Ms. Sprague's claims, Ameritech responded that it had destroyed the documentation that Mr. Cottrell's team members reviewed in conducting the investigation into Ms. Sprague's claims. (McLeodUSA Ex. 5.0, pp. 4-5 (Ameritech Response to McLeodUSA On-the-Record Data Request No. 9)). Given that AT&T witness Willard (AT&T Ex. 8.0) provides an extensive litany of problems experienced with the LSOG 4 OSS release and Joint Test Environment, it seems more credible to believe Ms. Sprague's claims rather than the purported results of some undocumented investigation testified to by Mr. Cottrell, which he acknowledged was conducted only at a high level. (Tr. 1142-43).

Ameritech's failure to provide a suitable Joint Test Environment means that CLECs do not have the required means to seamlessly migrate to new releases of Ameritech's OSS. Ms. Sprague testified that there are meaningful, and adverse, consequences to McLeodUSA resulting from the failure of Ameritech to properly manage the release of LSOG 5 EDI:

> There are several impacts, some of which are direct and some indirect, of not having the test environment actually ready for testing. First, we incur the cost of wasting the resources of our own IT development staff as they sit idle waiting for SBC/Ameritech to fix the problem *de jure*. There is the cost of being unable to use a specific platform or migrating customers to a platform because the inability to test causes us to change our business plans. For example, McLeodUSA has been planning to migrate its resold Centrex customer base to UNE-P to take advantage of better economics, but since the LSOG 5 EDI is not ready for use (by ready we are referring to operating on a commercial basis), we

[2] McLeodUSA has filed a motion to strike this testimony, due in part to the Ameritech's destruction of documents relied on by Mr. Cottrell and his team members in their "investigation" of McLeodUSA's complaints.

cannot proceed with that conversion process. That delay is costing McLeodUSA in terms of lost margins. (McLeodUSA Ex. 4.1, lines 49-61).

Because of the significant problems encountered by McLeodUSA in the LSOG EDI Joint Test Environment and the problems encountered by other CLECs in the LSOG 4 Joint Test Environment, McLeodUSA has a profound concern that the conversion to LSOG 5 EDI commercial production will be filled with catastrophic problems that will literally stop competition in Illinois. At the very least, these problems absolutely require that Ameritech's OSS systems and interfaces must be fully tested by the third party tester (KPMG) at commercial levels before the Commission makes a finding that Ameritech's OSS satisfies the checklist obligation to provide nondiscriminatory access to this UNE.

E. Public Interest – The Commission Should Require Ameritech To Demonstrate Compliance With All Market-Opening Illinois Laws and Regulations

In 2001, after years of frustrating delay, the Illinois General Assembly looked at the deplorable state of local competition in Illinois and took a bold initiative to craft perhaps the most pro-competitive telecommunications law in the United States. However, it apparently is the position of Ameritech that its compliance with Illinois law is completely irrelevant to whether or not the Commission should recommend approval of Section 271 authority for Ameritech. Ameritech's witnesses repeatedly claimed that the only relevant issues are those relating to Ameritech's compliance with the 14-point Section 271 checklist. Every other party to this proceeding disagrees. The Illinois Legislature passed its landmark legislation in 2001 because competition had not developed in Illinois under the requirements imposed by the federal Telecommunications Act of 1996. For the Commission to conclude that Ameritech is correct in its argument about the irrelevance of compliance with State law would be nothing less than an outright rejection of the General Assembly's assessment in 2001, and would eviscerate the

requirements the General Assembly has imposed.

Ameritech is not entitled to long distance authority unless and until it demonstrates to the satisfaction of this Commission and the FCC that its local markets are effectively open to competition. The Section 271 process, which holds out to Ameritech the lucrative carrot of entry into the long distance market, is this Commission's best (and perhaps last) real opportunity to ensure that Ameritech is taking the necessary actions, in accordance with federal and State law, to open its local markets to competition. Ameritech's refusal to affirmatively commit to comply with the market-opening provisions set forth in the Illinois Public Utilities Act, and its obvious strategy to repeatedly challenge, minimize or seek to interpret into inconsequence the new Illinois law, makes it clear that the public interest would not be served by granting long distance authority to Ameritech.

III. CONCLUSION

WHEREFORE, for the reasons set forth in this brief, McLeodUSA Telecommunications Services, Inc. and TDS Metrocom, Inc. respectfully request that the Commission issue an interim order finding that, at a minimum, Ameritech fails to satisfy checklist items 1 and 2, and that granting Ameritech long distance authority at this time would be inconsistent with the public interest because Ameritech's local markets in Illinois are not irreversibly open to competition.

Respectfully submitted,

MCLEODUSA TELECOMMUNICATIONS SERVICES, INC. and TDS METROCOM, INC.

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